IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9509 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHULABHAI CHANDUBHAI RATHOD

Versus

DISTRICT MAGISTRATE

Appearance:

MR SATISH R PATEL for Petitioner

Mr.H.L.Jani, learned A.G.P. for the respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 03/03/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 21.8.99 passed by the District Magistrate, Bharuch whereby the petitioner was detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985. Petitioner is lodged in the Central Jail, Sabarmati at Ahmedabad.The grounds of detention enclosed with the detention order show that 5 cases were registered against the petitioner under the Prohibition Act. All 5 cases are pending trial. The

detaining authority has also referred to the statements of 5 witnesses recorded with regard to the incidents dated 15.3.98, 19.6.98, 11.12.98, 15.2.99 and 27.6.99. The detaining authority has found the petitioner to be a bootlegger and engaged in relation to anti social activities. It has also been mentioned by the detaining authority that the other alternative steps taken against the petitioner including extradition have not been proved to be of any use to deter the petitioner from continuing his anti social activities and, therefore, it was necessary to detain him. Learned counsel for the petitioner has argued that no case of breach of public order is made about and the learned A.G.P. has also failed to show as to how it is a case of breach of public order.

According to several decisions of the Supreme Court, it is settled that even if all the allegations, as mentioned in the grounds of detention are taken to be true on their face value, they would not constitute a case of breach of public order. At the most it can be a case of breach of law and order. Therefore, the detention order cannot be sustained in the eye of law in the facts of present case.

Accordingly the impugned detention order dated 21.8.99 passed by the District Magistrate, Bharuch cannot be sustained in the eye of law. The same is hereby quashed and set aside. It is directed that the petitioner shall be released forthwith if not required to be detained under any other detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.

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